DOCUMENT RESUME

ED 210 441 CE 030 596

AUTHOR Brustein, Michael; and Others
TITLE Manual on Civil Rights in Vocational Education.
INSTITUTION New York State Education Dept., Albany. Office of Occupational and Continuing Education.
PUB DATE Jun 81
NOTE 146p.

EDRS PRICE MF01/PC06 Plus Postage.
DESCRIPTORS Age Discrimination; *Civil Rights; *Civil Rights Legislation; *Compliance (Legal); Disabilities; Equal Education; Ethnic Discrimination; Federal Legislation; Postsecondary Education; Racial Discrimination; Secondary Education; Sex Discrimination; Sex Fairness; Social Discrimination; *State Standards; *Vocational Education
IDENTIFIERS *New York

ABSTRACT

This guide provides vocational education administrators with resource information and explanations of various requirements of the Federal Civil Rights legislation as it relates to vocational education. It is intended to clarify the relationship of the Standards to the vocational education civil rights compliance program in New York. (The Standards set forth civil rights laws governing vocational education and how these laws specifically apply to vocational education in New York.) Following an introduction, section 2 considers purpose of the Standards, reason for their development, their development, development of the Methods of Administration, reasons vocational education is receiving special civil rights attention, relationship between Office for Civil Rights' Guidelines and sex equity provisions of the Vocational Education Act, and age discrimination as covered by the Standards. Each of the six sections comprising the Standards is overviewed in section 3; section 4 discusses major provisions. Compliance is briefly addressed in section 5. Section 6 contains the text of the Standards. The statutory, regulatory, or other legal authority for each provision is cited. Examples illustrate how specific provisions may apply to recipients. Sources of information and documents are listed that are useful in determining whether recipients are complying with the standards. Definitions are appended. (YLB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED210441

THE UNIVERSITY OF THE STATE OF NEW YORK

THE STATE EDUCATION DEPARTMENT

MANUAL

ON

CIVIL RIGHTS IN VOCATIONAL EDUCATION

June, 1981

CE 030 596

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUC. TION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

R. Trombly

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

THE UNIVERSITY OF THE STATE OF NEW YORK

Regents of The University (with years when terms expire)

1988	Willard A. Genrich, LL.B., L.H.D., LL.D., Litt.D, D.C.S., D.C.L. Chancellor	Buffalo
1988	J. Edward Meyer, B.A., LL.B. Vice Chancellor	Chappaqua
1986	Kenneth B. Clark, A.B., M.S., Ph.D., LL.D., L.H.D., D.Sc.	Hastings on Hudson
1983	Harold E. Newcomb, B.A., LL.D.	Owego
1982	Emlyn I. Griffith, A.B., J.D.	Rome
1983	Mary Alice Kendall, B.S.	Rochester
1984	Jorge L. Batista, B.A., J.D., LL.D.	Bronx
1986	Laura Bradley Chodos, B.A., M.A.	Vischer Ferry
1987	Martin C. Barell, B.A., I.A., LL.B.	Kings Point
1984	Louise P. Matteoni, B.A., M.A., Ph.D.	Bayside
1987	R. Carlos Carballada, B.S., L.H.D.	Arcade
1988	Floyd S. Linton, A.B., M.A., M.P.A., D.C.L.	Miller Place
1988	Salvatore J. Scafani, B.S., M.D.	Staten Island
1982	Mimi Lieber, B.A., M.A., M.A.	New York
1985	Shirley C. Brown, B.A., M.A., Ph.D.	Albany

President of The University and Commissioner of Education
Gordon M. Ambach

Executive Deputy Commissioner of Education
Joseph J. Blaney

Deputy Commissioner for Elementary, Secondary and Continuing Education
Robert R. Spillane

Assistant Commissioner for Occupational and Continuing Education
Gerald L. Freeborne

Director, Division of Occupational Education Supervision
Douglas T. Adamson

Coordinator, Occupational Education Civil Rights
Carol Jabonaski

FOREWORD

This manual has been prepared as a comprehensive guide to assist vocational education administrators meet the specific requirements of the Federal Civil Rights legislation as it relates to vocational education. This manual represents the Office of Occupational and Continuing Education's efforts to provide local education agencies with useful resource information and explanations of the various requirements with illustrative examples where appropriate.

It is recommended that each vocational education administrator become throughly familiar with this manual by carefully examining its contents.

This publication was developed under the direction of Carol Jabonaski, Coordinator of the Occupational Education Civil Rights unit.

This document was prepared by Michael Brustein, Leigh Manasevit, and Douglas Sparks, legal consultants of Brustein and Manasevit, Attorneys at Law. Assistance related to content was provided by Kent Boesdorfer, Sheryl Denbo, and Margaret Dunkle, consultants of the Organizational Leadership, Inc.

TABLE OF CONTENTS

I. INTRODUCTION -1-

II. BACKGROUND -2-

What Is the Purpose of the Standards?
Why Were the Standards Issued?
How Were the Standards Developed?
How Was the Methods of Administration Developed?
Why is Vocational Education Receiving Special Civil Rights Attention?
What Is the Relationship Between the OCR Guidelines and the Sex Equity Provisions in the VEA?
Why Do the Standards Cover Age Discrimination?

III. SUMMARY OF THE STANDARDS -10-

IV. DISCUSSION OF MAJOR PROVISIONS -14-

V. COMPLIANCE -18-

VI. STANDARDS GOVERNING CIVIL RIGHTS IN VOCATIONAL EDUCATION -19-

Key to Citations -19-

Section I - General Provisions
Section II - Establishment of Vocational Education Programs and Facilities
Section III - Recruitment and Admission
Section IV - Treatment of Students
Section V - Employment
Section VI - Age Discrimination
Appendix - Definitions

BEST COPY AVAILABLE

I. INTRODUCTION

This manual is designed to assist the reader in understanding the relationship of the Standards to the vocational education civil rights compliance program in New York. The document is organized in the following manner:

I. Introduction
II. Background
III. Summary of the Standards
IV. Discussion of the Major Provisions
V. Compliance
VI. Text of the Standards with Examples, Citations to Legal Authority, and Suggested Information Sources.

The Background in Section II addresses the following general questions:

What is the purpose of the Standards?
Why were the Standards issued?
How were the Standards developed?
How was the Methods of Administration developed?
Why is vocational education receiving special civil rights attention?
What is the relationship between the Office for Civil Rights' Guidelines and the sex equity provisions of the Vocational Education Act?
Why do the Standards cover age discrimination?

Section III sets forth an overview of each of the six sections which comprise the Standards. Section IV discusses the major provisions of the Standards. This section should be particularly helpful in explaining the key requirements.

Section V of the manual contains the text of the Standards. A citation to the statutory, regulatory or other legal authority for each provision of the Standards is in parentheses on the line immediately following the provision. In addition, hypothetical examples illustrating how specific provisions of the Standards may apply to recipients are set forth to provide practical guidance to the reader. The examples are intendend only to illustrate how to apply Standards to specific cases. Since even a slightly different factual situation might require a different analysis or result in a different conclusion, it is important to emphasize that each case will be evaluated on its own merits. Section V also lists sources of information and documents that could be useful in determining whether recipients are complying with the Standards. This list is not intended to be exhaustive and other important sources of information will undoubtedly be identified as the civil rights compliance reviews progress.

II. BACKGROUND

What Is the Purpose of the Standards?

The purpose of the Standards is to provide guidance to the vocational education community, especially local vocational education administrators and practitioners, concerning their obligation and responsibilities under various Federal civil rights authorities. The Standards set forth:

(1) The Federal civil rights laws governing vocational education; and

(2) How these civil rights laws specifically apply to vocational education in New York State.

Why Were the Standards Issued?

The Standards were issued as one integral part of the State's comprehensive effort to respond to new Federal directives in the area of civil rights compliance. In March of 1979, the Office for Civil Rights (OCR) in the Department of Health, Education and Welfare promulgated the "Guidelines for Eliminating Discrimination and Denial of Services in Vocational Education on the Basis of Race, Color, National Origin, Sex and Handicap" (44 FR 17162). One of the most important features of the OCR Guidelines, contained in Section II B, clearly mandates that in addition to OCR's civil rights activities, State education agencies must also undertake major responsibility for civil rights compliance.

Under the Guidelines, State agencies responsible for administering vocational education programs are specifically required to take an expanded role in providing technical assistance and in monitoring subrecipients, through periodic compliance reviews, for adherence to the various civil rights authorities. While this requirement has technically been in place for several years (45 CFR 80.4), it was not clearly understood or enforced until OCR issued the Guidelines. As explained in the preamble to the Guidelines, each State education agency is legally required to ensure that recipients of Federal financial assistance do not engage in unlawful discrimination.

Section II(c) of the Guidelines requires the State agency responsible for the administration of vocational education to submit to the U.S. Department of Education the Methods of Administration (MOA) and related procedures it will follow to implement the civil rights activities required under the Guidelines. In July of 1979, OCR and the Bureau of Occupational and Adult Education jointly issued a detailed memorandum describing how each State agency should prepare its MOA.

Shortly after the July memorandum was issued, staff in the State Education Department began formulating plans to develop New York's MOA. At the outset, the SED recognized the scope and the complexity of preparing an MOA adequate to meet the needs of New York's large and comprehensive vocational education

program. For example, in New York there are well over 1,000 recipients of Federal financial assistance that administer programs of vocational education or training and therefore are subject to the requirements of the Guidelines.

In order to respond effectively to the Federal requirements, the State Education Department determined that all recipients in the State would need to know as early as possible the specific standards against which they would be evaluated. The Federal civil rights laws and OCR Guidelines, however, only partially fulfill this objective, since they are often general in nature, designed to cover a wide range of programs across the entire Nation. In addition, none of the civil rights authorities, with the exception of the OCR Guidelines, is limited to vocational education.

In light of the State's desire to make all recipients aware of their specific responsibilities and the more general nature of the Federal civil rights authorities, the State Education Department, as a critical component of its MOA, determined that it was necessary to compile "Standards Governing Civil Rights in Vocational Education." Those standards, which are set forth in this manual, are based on Federal civil rights laws and are designed specifically for application to vocational education programs in New York State. Instead of having continually to consult five different Federal civil rights authorities, numerous court decisions, and various administrative interpretations, recipients are now able to focus on this single comprehensive document for purposes of civil rights compliance.

How Were the Standards Compiled?

Prior to their issuance, the standards were carefully reviewed both by an internal review group in the SED and by an external review group representing a variety of interests across the State. The internal review group, which met to discuss the standards in August of 1980, had the following representation:

- Counsel and Deputy Commissioner for Legal Affairs
- Special Assistant to the Executive Deputy Commissioner
- Assistant Commissioner for Education of Children with Handicapping Conditions
- Assistant Commissioner for Higher Education Services
- Assistant Commissioner for Education Finance, Management and School Services
- Assistant Commissioner for District Organization and District Superintendent
- Employee Relations Officer
- Assistant Commissioner for Vocational Rehabilitation
- Director, Division of Occupational Education Supervision
- Director, Division of Intercultural Relations
- Director, Information Center on Education
- Director, Division of Occupational Education Planning, Research and Evaluation
- Chief, Bureau of Bilingual Education
- Chief, Bureau of Grants Administration
- Supervisor, Occupational Education Instruction for the Handicapped
- Associate, Occupational Education Research

The external review group, which also met to discuss the Standards in August of 1980, had the following representation:

- Chairperson of the Vocational Education Advisory Council
- Chairperson of Commissioner's Advisory Council on Bilingual Education
- Chairperson of the Commissioner's Advisory Council on the Handicapped
- Vice Chancellor of Student Affairs and Special Programs
- Director, New York Institute of Dietetics
- New York State Department of Labor, Chairperson for Apprenticeship Council
- President of the Council of School District Administrators
- Senior Attorney, New York State Human Rights Division
- Representative of the District Superintendents
- Commissioner's Advisory Council on Equal Opportunity for Women
- President, Commission on Independent Colleges and Universities
- Representative of the Occupational Education Directors
- Executive Director of the School Boards Association
- Vice Chancellor for Community Colleges, State University of New York
- Executive Director, Conference of Large City Boards of Education
- Executive Director, United Palsy Association of New York State
- President of the New York State Occupational Education Association
- Commissioner's Consultant, Huntington School District
- President, Rochester Business Institute.

In addition to a careful review by the two groups listed above, the Standards were reviewed by the Assistant Secretary for Civil Rights in the U.S. Education Department. Finally, after the benefit of valuable guidance provided by these individuals, the Standards were finalized and issued by the New York State Education Department in September of 1980.

This manual explains in detail how the Standards apply to vocational education programs operated by recipients of Federal financial assistance. Each recipient should study the manual carefully and assure itself that its program is being conducted in accordance with the requirements contained herein. If a recipient has specific questions concerning how certain provisions apply to the recipient's program it should contact either the Assistant Commissioner for Occupational and Continuing Education (518/474-3981) or the Assistant Commissioner for Higher Education Services (518/474-3896) in the State Education Department.

While great care has been taken to assure that the Standards reflect the most recent civil rights court decisions and Federal interpretations, the reader should be aware that the law in this area is constantly changing. For example, on July 24, 1980, the Second Circuit Court of Appeals issued and important opinion on emploment discrimination. That decision, North Haven Board of Education v. Hufstedler, necessitated amending the Standards.

Another important recent development in civil rights law occurred on August 5, 1980. On that date, the U.S. Education Department issued proposed regulations under Title VI prohibiting discrimination against persons with limited English proficiency. The regulations, as proposed, would impose a number of specific responsibilities on recipients of Federal financial assistance. It is doubtful that these regulations will become final before 1981 and, in any event, there are likely to be some changes from the proposed rules. When final regulations are issued, however, it will be necessary to revise the Standards accordingly.

How Was the Methods of Administration (MOA) Developed?

A process similar to the one chosen to develop the Standards was followed to develop the MOA. As stated above, the MOA describes the steps which the SED will take to comply with the OCR Guidelines and to provide technical assistance and monitor subrecipients for civil rights compliance; the Standards, in turn, stem from the operating plan described in the MOA.

The MOA was issued as required on March 21, 1980, and amended on July 24, 1980. It was reviewed by the same internal and external groups that subsequently reviewed the Standards. The MOA describes five major steps that the SED has either completed or is currently undertaking to build the capacity to assure civil rights compliance. The five steps are as follows:

- Restructuring the Office of Occupational and Continuing Education to establish a Coordinating Unit for Civil Rights Compliance for secondary and adult levels, and incorporating a compliance capability in the Bureau of Grants Administration for postsecondary level.

- Developing an effective data system to deliver accessible and interpretable compliance information.

- Developing compliance standards based on the existing civil rights authorities which are relevant to the delivery of vocational education programs. (These standards were promulgated by the State Education Department as the Standards on Civil Rights in Vocational Education).

- Designing procedures to implement the compliance standards and training staff to use them for both the State desk audit and on-site compliance reviews.

- Developing technical assistance materials for State agency personnel who are assigned reponsibility for assisting with voluntary compliance plans.

Each of these steps is expected to be in place by November, 1980. Concurrently, staff will begin reviewing data and other sources of information on individual recipients. After a preliminary review of this data, SED staff will conduct on-site reviews of a number of individual recipients. Prior to any on-site review, the Chief School Officer or Chief Executive Officer will be notified of the scheduled review.

Why is Vocational Education Receiving Special Civil Rights Attention?

The OCR Guidelines were mandated by the December 7, 1977, court order issued in Adams v. Califano. This case originated in 1971 as Adams v. Richardson, with each succeeding Secretary of HEW being substituted for the previous Secretary as defendant. The suit was filed by the NAACP Legal Defense Fund (LDF) on behalf of seven plaintiffs, including Adams, a seven-year-old boy. LDF claimed that HEW had failed to enforce Title VI of the Civil Rights Act of 1964 in seventeen southern and border states. The suit pointed to four major areas of nonenforcement:

1. elementary and secondary education;

2. higher education;

3. vocational education; and

4. state-administered schools (mostly for deaf and blind persons).

Specifically, the complaint alleged that the Department had failed to move against 102 elementary and secondary schools in the seventeen southern and border states which apparently were discriminating against both teachers and students by maintaining racially segregated schools.

The case was heard in 1973; the court agreed with the plaintiffs and issued an order requiring HEW to begin enforcing Title VI. In response, OCR placed its emphasis on elementary and secondary education, began some work on higher education, and neglected vocational education and the state-administered schools.

In 1975, the plaintiffs filed a motion for further relief because they felt that OCR had done an inadequate job in elementary, secondary and higher education and had made no enforcement efforts in the areas of vocational education and state-administered schools. The court granted the motion, and OCR was ordered to take prompt action to improve its enforcement program for Title VI.

In 1976, other advocacy groups representing women, Mexican-Americans and handicapped persons petitioned the court to intervene in the Adams case. In addition, they asked that the case be expanded to include all fifty states. In 1977, this request was granted and Adams was expanded to include all fifty states and to cover women, Mexican-Americans and handicapped persons, as well as racial minorities.

In late summer of 1976, representatives of the plaintiffs met with the Director of OCR and expressed concern that vocational education was being ignored in OCR's enforcement efforts. Their concern was based on research showing disproportionate

participation rates for blacks and women in vocational education. They claimed that "vocational education, historically and presently, reinforces and perpetuates not only the prevailing sterotypes as to socially acceptable occupations for women and minorities, but also the race and sex discrimination in the labor market fostered by employer and union practices. Jobs for which women and minorities are trained in vocational schools are still the lowest paid, the most menial, the least skilled, and the most restrictive of upward employment mobility."

OCR stated that it would take prompt action to remedy this situation by issuing within ninety days guidelines for enforcement of civil rights in vocational education. This promise had not been met by January, 1977, when the Carter Administration took office. In the spring of 1977, representatives of the plaintiffs met with the new Director and Deputy Director of OCR to remind them of previous commitments made by OCR. These commitments were reaffirmed; however, when action had still not been taken by July, 1977, the Adams plaintiffs filed a motion for additional relief in vocational education as part of the overall Adams suit. The motion asked for specific action in the area of vocational education.

On December 19, 1977, the parties agreed to a Consent Decree which required OCR to take a number of actions, including issuing the Guidelines, conducting a survey, and undertaking compliance reviews. Thus the Guidelines, published in proposed form on December 18, 1978, and in final form on March 21, 1979, were issued to provide guidance to the vocational education community on how the civil rights statutes generally apply to vocational education schools and programs throughout the Nation.

What Is the Relationship Between the OCR Guidelines and the Sex Equity Provisions of the Vocational Education Act?

The Vocational Education Amendments of 1976, which many regard as a significant piece of Federal civil rights legislation, contain approximately twenty-five provisions to eliminate sex sterotyping and discrimination in vocational education programs. Included among these requirements is the designation of full-time personnel to assist the State board in eliminating sex sterotyping in all vocational education programs. The Sex Equity Office in New York, which has been in place since 1977, has made substantial progress to improve vocational educational opportunities for men and women. Although the Sex Equity Office will continue to carry out its statutorily assigned functions (Section 104(b) of the Vocational Education Act), a new civil rights compliance unit, reporting directly to the Assistant Commissioner for Occupational and Continuing Education, will assume responsibility, with the exception of postsecondary institutions, for civil rights compliance activities mandated by the OCR Guidelines. The Bureau of Grants Administration in the Office for Professional and Higher Education will assume this responsibility with respect to postsecondary programs.

These units will ensure that the Standards prohibiting discrimination on the basis of sex, race, color, national origin, handicap and age are followed in all vocational education programs receiving Federal financial assistance through the State Education Department. Since these units will have responsibility for compliance with Title IX (prohibition of discrimination on the basis of sex in education programs), the work of the Sex Equity Office will be coordinated with them.

Why Do the Standards Cover Age Discrimination?

The OCR Guidelines, published in March, 1979, cover the antidiscrimination provisions under Title VI (race), Title IX (sex), and Section 504 (handicap). The latest of the Civil Rights authorities, the Age Discrimination Act of 1975 (ADA), as amended in 1978, was not included in the OCR issuance because HEW had not yet promulgated final regulations to implement the ADA.

The issue of including the ADA in the Guidelines was raised in the analysis section of the Guidelines (Comment 4-44 FR 17168):

> Comment: Commenters requested that the Guidelines state the responsibilities of the recipients under the Age Discrimination Act of 1975.
> Response: Regulations under the Age Discrimination Act have not yet been issued. The Guidelines will ultimately include coverage of age discrimination.

HEW issued the final governmentwide age discrimination regulations in July, 1979. Although the Guidelines have not yet been amended to reflect these newest age discrimination regulations, the formal policy of OCR, as indicated in the comment analysis, will be to subject recipients to the requirements of the ADA. Rather than amending the Standards in the future to include the ADA, Section VI of the Standards was drafted to reflect the requirements of the final age discrimination regulations published in July, 1979.

III. SUMMARY OF THE STANDARDS

The Standards are divided into the following six sections and an appendix:

Section I	- General Provisions
Section II	- Establishment of Vocational Education Programs and Facilities
Section III	- Recruitment and Admission
Section IV	- Treatment of Students in Vocational Education Programs, Services and Activities
Section V	- Employment
Section VI	- Age Discrimination
Appendix	- Definitions

Section I - General Provisions

Section I sets forth the civil rights requirements prohibiting discrimination on the basis of sex, race, color, national origin, handicap and age in vocational education programs. These civil rights requirements are based on the following Federal civil rights authorities: (1) Title VI of the Civil Rights Act of 1964; (2) Title IX of the Education Amendments of 1972; (3) Section 504 of the Rehabilitation Act of 1973; (4) the Age Discrimination Act of 1975; and (5) The OCR Guidelines for Eliminating Discrimination and Denial of Services in Vocational Education on the Basis of Race, Color, National Origin, Sex and Handicap. Section I states that the Standards apply to each recipient of Federal financial assistance offering or administering a program of vocational education.

Section I also provides guidance to recipients on voluntary and mandatory remedial action. Recipients are permitted to take voluntary remedial action to remedy the effects of conditions that resulted in limited participation in the program by handicapped persons or by persons of a particular sex, race, color, national origin or age group. If the recipient is found to have discriminated against persons in violation of these Standards, the recipient must undertake remedial action to correct the violation.

Section II - Establishment of Vocational Education Programs and Facilities

Section II describes the specific civil rights prohibitions against discrimination in the establishment of vocational education programs or facilities. Recipients must comply with the antidiscrimination provisions in facility site selection as well as in renovation and construction of facilities. Eligibility criteria used by recipients may not have an unlawful discriminatory effect on students or applicants. And finally, this section specifically addresses program accessibility for handicapped persons.

Section III - Recruitment and Admission

Section III governs the recruitment and admissions practices of recipients. Recipients may not engage in recruiting practices or promotional activities that discriminate against or sterotype persons on the basis of sex, race, color, national

origin, handicap or age. In addition, recipients must issue a public announcement prior to the beginning of each school year which advises the gneral public that vocational opportunities will be offered on a nondiscriminatory basis. The announcement should also briefly describe course offerings and admissions criteria.

This section also provides specific guidance on the use of admissions tests or other selection criteria for entrance into a vocational program. The use of any selection criterion that disproportionately excludes applicants on the basis of sex, race, color, national origin or handicap must be validated as essential for participation in that particular program. Recipients may not inquire into an applicant's marital status, race, color, national origin or handicap prior to accepting the applicant for admission, unless the inquiry is made to develop an I. E. P. or to increase participation of groups which have been traditionally underrepresented in the recipient's program. Nor may a recipient use an introductory course as a prerequisite for admission unless the course is availalbe without regard to sex, race, color, national origin and handicap.

Section IV - Treatment of Students in Vocational Education Programs, Services and Activities

Section IV covers a variety of issues related to the treatment of students in vocational education programs. In general, recipients may not adopt academic requirements for participation in or completion of a vocational education program that discriminate on the basis of sex, race, color, national origin, handicap or age. This section describes special rules protecting handicapped children and ensures that they are educated with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped child. These rules reference the Commissioner's Regulaions governing the identification of handicapped children (S 200.12), individualized education programs (S 200.4(f)), procedural safeguards (S 200.5), and formation of special classes for handicapped students (S 200.4).

This section also describes the prohibition against discrimination in a recipient's guidance and couseling programs, in its use of testing instruments to assess student performance, and in its conduct of cooperative vocational education, work study, apprenticeship training and job placement programs. Any written agreement entered into by a recipient for the referral or assignment of students under a cooperative, work study or apprenticeship program must contain an assurance from the union, sponsor or employer that students will be accepted and assigned to jobs and otherwise treated without regard to sex, race, color, national origin or handicap. These antidiscrimination provisions are also applicable to membership in vocational student organizations, to the availability of housing opportunities and to the provision of student financial assistance.

Section V - Employment

Section V sets out the prohibitions against discrimination in the employment of faculty and staff. Recipients may not discriminate against applicants for employment on the basis of sex or handicap. Additionally, where a primary purpose of the Federal financial assistance to a recipient is to provide employment, the recipient may not discriminate in its employment practices on the basis of race, color or national origin. In a program receiving Federal financial assistance which

is not for the purpose of providing employment, the recipient is prohibited from discriminating on the basis of race, color or national origin only if the discrimination tends to result in discrimination against students.

The Standards require all terms, conditions and privileges of employment be free of discrimination. Employment tests and other selection criteria may not disproportionately exclude applicants on the basis of sex, race, color, national origin or handicap unless the recipient can demonstrate that the selection criteria validly predicts successful job performance. Also covered are employment inquiries, recruitment and advertising, hiring and promotion policies, job classifications and fringe benefits. In addition, recipients must make reasonable accommodation to the known handicapping condition of an applicant or employee.

It is important to note that these provisions describe only the prohibitions against discrimination in employment contained in Titles VI and IX and Section 504 of the Federal Civil Rights Laws. Other provisions of Federal and State law may prohibit employment discrimination not covered by these Standards.

Section VI - Age Discrimination

This section sets out the prohibition against discrimination on the basis of age in vocational education programs. A separate section to govern age discrimination is set forth because the Age Discrimination Act, enacted by Congress in 1976, is dissimilar to the other Federal civil rights laws. Whereas Title VI (race), Title IX (sex) and Section 504 (handicap) prohibit discrimination per se, the Age Discrimination Act contains several exceptions that permit, under limited circumstances, continued use of age distinctions. Congress did not prohibit the use of all age distinctions because it recognized that many age distinctions are rational and necessary. For example, age-based state compulsory school attendance requirements are permissible age distinctions which reflect an effort to meet the needs of particular age groups.

The standards in Section VI are consistent with the Federal law and regulations barring age discrimination. Age distinctions which are contained in Federal, State or local statutes or ordinances are not prohibited. In addition, a recipient may take an action which has a disproportionate impact on the basis of age if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of a statutory objective of the program. The burden is on the recipient to demonstrate that the age distinction is necessary to the normal operation of the program or to the achievement of a statutory objective.

These Standards do not cover employment discrimination on the basis of age. The reason for this omission is that the OCR Guidelines, which precipitated the development of these Standards, indicate that coverage under the Guidelines is to be extended only to the Age Discrimination Act (ADA). Recipients should be aware, however, that the Age Discrimination in Employment Act (ADEA), which is administered by the Equal Employment Opportunity Commission, and the New York State Human Rights Law do prohibit age discrimination in employment.

IV. DISCUSSION OF MAJOR PROVISIONS

Major provisions of the Standards include the following:

(1) Scope of Coverage (Section 1.2)

The Standards apply to each recipient of Federal financial assistance that offers or administers a program of vocational education or training. There is a wide variety of recipients in New York that offer vocational education. Included among the various types of recipients are BOCES, proprietary schools, community colleges, comprehensive high schools, agricultural and technical colleges, four-year colleges and the state schools for deaf and blind persons. Each recipient is reponsible for complying with the Standards.

Although all recipients are subject to the Federal civil rights authorities, state level and on-site compliance reviews will be limited, in accordance with the Guidelines, to recipients that receive Federal financial assistance through the State Education Department. Recipients that receive only Federal financial assistance which does not pass through the SED (e.g., Federally guaranteed student loans) will not be monitored by the SED. These recipients, however, may nevertheless be reviewed by the U.S. Education Department's Office for Civil Rights.

(2) Voluntary and Mandatory Remedial Actions (Sections 1.4 and 1.5)

The practice of taking positive steps to increase participation of groups which have been historically underrepresented in the mainstream of educational programs has been the subject of much discussion in recent years. Today, this practice is an increasingly valuable tool for ensuring truly equitable participation of all persons in vocational education.

Sections 1.4 and 1.5 of the Standards set out the framework within which recipients may take positive remedial steps. Section 1.4 covers situations where the recipient itself may never have practiced unlawful discrimination, yet desires to stimulate and increase participation of underrepresented groups in its programs. Specifically, a recipient which is seeking to increase participation of underrepresented groups may properly consider factors such as sex, race, color, national origin, handicap or age when accepting students or employees in its programs. Recipients may also increase recruitment of underrepresented groups or provide special preparatory or remedial courses designed to help such students meet admissions or selection criteria. Voluntary remedial actions such as these do not constitute unlawful discrimination.

Another activity that recipients may voluntarily undertake is that of setting numerical goals for participation of underrepresented persons. For example, if handicapped persons comprise only 3 percent of a recipient's student body, the recipient may wish to increase that participation until it reaches 10 percent, a proportion which is closer to the proportion of handicapped persons in the recipient's service area. To achieve this goal, the recipient may take into account, as one factor in its selection process, whether an applicant is handicapped.

The practice of establishing numerical goals for the purposes set forth on the previous page is permissible, and must be distinguished from the generally impermissible practice of setting quotas. In the absence of a finding that a recipient has discriminated, the recipient may not select persons for a number of positions in its program solely on the basis of sex, race, color, national origin, handicap or age. In other words, the recipient may consider in its admissions process factors such as gender and race, but it may not base a decision on those factors alone.

If, on the other hand, a recipient is found to have unlawfully discriminated, it may be appropriate for the recipient to establish a quota for a limited time to remedy the discrimination in accordance with Section 1.5. That section describes the requirement that recipients which have unlawfully discriminated take whatever remedial actions the Commissioner deems necessary. Of course, the remedial steps necessary to address any given violation will be determined on a case-by-case basis taking into consideration all relevant circumstances.

(3) Rules Protecting Handicapped Persons (Section 4.2(c) and (d))

A number of the standards are designed to meet the unique needs of handicapped persons. In several cases, the standards reference Commissioner's Regulations that protect handicapped children. For example, Part 200 of the Commissioner's Regulations, which implements Section 4402 of the Education Law, sets forth specific rules governing the education and treatment of handicapped children. Rather than repeating the text of each of those regulations in the Standards, they are instead simply cross-referenced.

One place where the Commissioner's Regulations are cross-referenced is in Section 4.2(c). That section requires school districts to comply with the rules in Part 200 regarding identification, placement and development of individualized education programs for handicapped children. In addition, recipients must observe the procedural safeguards in S 200.5.

The rules in Part 200 are again cross-referenced under Section 4.2(d) which contains several provisions relating to educating handicapped students in the least restrictive environment. While four of the five provisions under Section 4.2(d)(3) applies only to school districts that form special classes for handicapped children under twenty-one years of age. Although the Standards cross-reference only those sections of Part 200 that are within the scope of the civil rights compliance reviews, all school districts are reminded of their continuing responsibility for compliance with the other provisions of Part 200.

(4) Validation (Sections 3.2(d) and 5.2(a))

These two sections contain requirements that are similar in nature. To summarize: if a recipient uses a test or other criterion to select its students or employees, and the test or criterion results in persons who are handicapped or of a particular sex, race, color or national origin being denied access to the the recipient's program or work force at a rate significantly greater than nonminority persons, the recipient must show that use of the test or criterion measures or predicts an ability that is essential for participation in the program. (For employment

tests, the recipient must show that it validly predicts successful job performance.) If the recipient does not demonstrate this connection, it may not continue using the test.

There are several ways of validating tests and selection criteria, and the recipient is free to choose any legitimate method. In the case of admissions tests which result in disproportionate exclusion rates, the recipient must show that the test predicts whether a person is able to satisfactorily complete the course for which the test is being used. For example, assume a recipient uses relative grade point average to select students for an electronics course; the recipient accepts students with a "B" average and rejects students with a "C" average. If this practice results in minority students being disproportionately denied access to the program, the recipient would be required to show that "C" students could not satisfactorily complete the electronics course.

As indicated above, the validation standard for employment tests and selection criteria is whether the test or criterion validly predicts successful job performance. For example, assume a recipient requires applicants for a teaching position to achieve a minimum score on a written test. If the test disproportionately excludes minorities and does not indicate whether persons can be successful at the teaching position, the recipient may not use the test.

In sum, a test or selection criterion which does not otherwise violate state or federal law is permissible if it does not disproportionately exclude persons on the basis of sex, race, color, national origin or handicap. If disproportionate exclusion occurs, however, the recipient must either cease using the test or validate it in accordance with the Standards.

(5) Employment Discrimination (Section 5.1)

Unlike most of the standards, the section prohibiting unlawful discrimination in employment has three general rules. It was necessary to take this approach because, over the past several years, there has been considerable confusion and litigation regarding the degree to which Title IX, Title VI and Section 504 prohibit discrimination in employment. In fact, it was not until a July 24, 1980, decision in the case of North Haven Board v Hufstedler that the broad reach of Title IX's prohibition on sex discrimination in employment was affirmed.

Section 5.1(a) describes the prohibition against a recipient engaging in any specific employment practice included under Section 5.2 if it results in discrimination on the basis of sex or handicap. Sections 5.1(b) and (c) describe the prohibitions against specific employment practices included under 5.2. These sections, 5.1(b) and (c), cover employment practices which discriminate on the basis of race, color or national origin only if (i) the practice tends to result in discrimination against students on the basis of race, color or national origin or if (ii) the primary purpose of the Federal financial assistance is to provide employment.

Coverage is limited under Title VI to (a) cases that adversly affect students and (b) cases arising in programs where the primary purpose of the Federal financial assistance is to provide employment because Congress expressly excluded Title VI coverage of other employment practices. This is not to say that recipients

or other employers may discriminate against persons on the basis of race, color or national origin in cases falling outside of Title VI's prohibition. On the contrary, Title VII of the Civil Rights Act of 1964, which is enforced by the Equal Employment Opportunity Commission, prohibits unlawful discrimination in employment regardless of its effect on students. In addition, the New York State Human Rights Law contains strong protections against employment discrimination. Since these latter two laws are not administered by OCR, and consequently are not included among the statutes which the Guidelines require the State Education Department to oversee, they will not be included in the civil rights monitoring program. All recipients are reminded, however, of their additional reponsibilities under these two statutes.

V. COMPLIANCE

Each recipient is reponsible for complying with the civil rights authorities embodied in the SED Standards. In accordance with its legal obligations, the State Education Department will be providing technical assistance and monitoring recipients to assure that they meet these civil rights responsibilities.

If, after an initial on-site review, the SED has reason to believe there may be a civil rights violation, the SED will issue a preliminary letter of findings to the recipient. The recipient has thirty days to respond to this preliminary letter. The SED will carefully review any response received from a recipient and within thirty days thereafter will determine whether a civil rights violation has occurred. In that event, the SED will issue a final letter of findings to the recipient.

After the recipient receives a final letter of findings, it has ninety days to submit a compliance plan outlining the steps it will take to remedy each violation identified in the letter. Where circumstances warrant, the Commissioner may allow a recipient, upon a written request, an additional 30 days to complete its compliance plan. If the compliance plan is acceptable, it is approved and no further action is taken as long as the recipient adheres to its plan. If the recipient does not submit a satisfactory compliance plan, however, the SED will disapprove any further applications by the recipient for Federal financial assistance. In addition, the SED will refer the case to the Assistant Secretary for Civil Rights in the U.S. Education Department.

To insure that all recipients are aware of their responsibilities under the various civil rights authorities, new language is being inserted into the grant award instruments signed by each recipient of Federal financial assistance. Beginning with grant awards for fiscal year 1981, each recipient must comply with the relevant civil rights authorities, provide SED staff with access to records relating to civil rights compliance, and submit a compliance plan if it receives a final letter of findings from the SED indicating that there are civil rights violations in its program. These requirements currently stem from Federal law and are being inserted into the grant award instruments primarily to ensure that recipients are aware of their responsibilities.

VI. STANDARDS GOVERNING CIVIL RIGHTS IN VOCATIONAL EDUCATION PROGRAMS

Key to Citations

After each provision of the Standards, the reader will note that there is a citation to the regulatory or other legal authority for the standard. The following key explains what the abbreviated citations mean:

FR - This means the Federal Register. The Federal Register is published almost daily by the Federal Government and can be found in most law libraries and many other reference counters. It contains regulations, public notices, interpretations, guidelines and other information of interest to the general public. When the Federal Register is cited in the Standards, the numbers immediately preceding "FR" refer to a particular volume of the Federal Register. The numbers immediately following "FR" refer to the pages within a particular volume of the Federal Register.

CFR - This means the Code of Federal Regulations. After Federal regulations are published in final form in the Federal Register, they are codified by subject in the Code of Federal Regulations. This compilation enables one to systematically locate all Federal regulations. As in the case of the Federal Register, the CFR is published by the Federal Government and can be found in virtually all law libraries. When the Code of Federal Regulations is cited in the Standards, the numbers immediately preceding "CFR" refer to the section of the regulation within a particular title of the Code of Federal Regulations. For example, when the citation is 45 CFR 86, the citation is to Volume 45, Section 86, which is Title IX; when the citation is 45 CFR 84, the citation is to Section 504; when the citation is 45 CFR 80, the citation is to Title VI; and when the citation is to 45 CFR 90, the citation is to the Age Discrimination Act.*

NYCRR - This means the regulations issued by the Commissioner of Education in New York State. These regulations are contained in the Official Compilation of Codes, Rules and Regulations of the State of New York, which is prepared by the Secretary of State. It is available in many law libraries, especially those located in New York State. When the New York Code of Rules and Regulations is cited in these standards, the number immediately preceding "NYCRR" refers to Title 8 of this compilation, which is the title containing education-related regulations. The number immediately following "NYCRR" refers to the section of a particular regulation within Title 8.

MOA - This means the Methods of Administration. The Methods of Administration is a document which Section II C of the OCR Guidelines requires state education agencies to submit to the Office for Civil Rights. The New York MOA describes the procedures that the State Education Department follows in monitoring recipients for civil rights compliance as required by the Guidelines. This document is available upon request from the Office of Occupational and Continuing Education in the State Education Department.

*On May 9, 1980, the new United States Education Department reissued many of these regulations in the Federal Register at 45 FR 30802. When codified, they will be included in Title 34 of the Code of Federal Regulations and will be renumbered accordingly.

SECTION I

GENERAL PROVISIONS

1.1 What is the purpose of these standards?

(a) The purpose of these standards is to set forth the Federal civil rights requirements prohibiting discrimination on the basis of sex, race, color, national origin, handicap and age in vocational education programs.

(b) The Federal civil rights authorities governing vocational education programs are as follows:

1) Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color and national origin.

2) Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex.

3) Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap.

4) The Age Discrimination Act of 1975 prohibits discrimination on the basis of age.

5) The U.S. Office for Civil Rights' "Guidelines for Eliminating Discrimination and Denial of Services in Vocational Education on the Basis of Race, Color, National Origin, Sex and Handicap" prohibit unlawful discrimination in vocational education programs.

1.2 What is the scope of these standards?

These standards apply to each recipient of Federal financial assistance offering or administering a program of vocational education or training.

1.3 What is prohibited?

No person shall, on the basis of sex, race, color, national origin, handicap or age, be excluded from partcipation in, be denied the benefits of, or otherwise be subjected to unlawful discrimination under any vocational education program or activity.

1.4 What types of voluntary remedial actions are permitted?

(a) A recipient may take voluntary action that might otherwise violate these standards when the action is taken to remedy the effects of conditions that resulted in limited participation in the recipient's program or activity by handicapped persons or by persons of a particular sex, race, color, national origin or age group.

(b) Permissible voluntary actions to remedy the effects of conditions that resulted in limited participation include, but are not limited to:

1) Consideration of sex, race, color, national origin, handicap or age in selecting from among potential students or employees;

2) Accelerated recruitment from institutions and communities containing significant proportions of minorities or other underrepresented groups;

3) Offering special summer and tutoring service to assist member of underrepresented groups, particularly educationally and economically disadvantaged persons, to meet admissions or selection criteria; and

4) Establishment and pursuit of numerical goals to achieve a balanced student body or a diverse group of employees.

(c) Recipients are not permitted to establish a quota by setting aside a fixed number of positions for which persons are chosen solely on the basis of sex, race, color, national origin, handicap or age.

1.5 What types of mandatory remedial actions are required?

(a) Whenever the Commissioner finds that a recipient has discriminated against persons on the basis of sex, race, color, national origin, handicap or age, the recipient shall take whatever remedial action, including the submission of a compliance plan, that the Commissioner deems necessary to overcome the effects of discrimination.

(b) Where a recipient is found to have discriminated against persons in violation of these standards and where another recipient contributes to the discrimination or exercises control over the recipient that has has discriminated, the Commissioner may require either or both recipients to take remedial action.

SECTION II

ESTABLISHMENT OF VOCATIONAL EDUCATION PROGRAMS AND FACILITIES

What is the general rule?

A recipient may not establish or maintain a vocational education program or facility that results in unlawful discrimination against persons on the basis of sex, race, color, national origin, handicap or age. (OCR Guidelines, Section IV B, 44 FR 17162)

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
2.2(a) Vocational facility site selection. 1) A recipient may not select or approve of a site for a vocational education facility that excludes, segregates or otherwise discriminates against students on the basis of sex, race, color, national origin or handicap. 2) A recipient shall locate facilities so that they are readily accessible to minority communities and handicapped persons and are not identifiable as intended for nonminority or minority students. EXAMPLE: Six component school districts, constituting a BOCES, decide to construct a vocational facility in the wealthiest component district. If this district is predominantly nonminority, with most minority students residing in districts located farther from the BOCES, this site selection might result in a disproportionately low number of minority students attending the facility. In selecting a site for the facility, the board members would need to locate it geographically so that it was convenient for more minority students.	45 CFR 80.3; OCR Guidelines, Section IV B, 44 FR 17165.	1) Maps and descriptions of site locations and service area boundaries. 2) Demographic data in census surveys indicating residential patterns within the service areas. 3) Description of transportation services available in the service areas--routes, schedules and the types of services provided handicapped students (e.g., lift vehicles).

25

26

STANDARD

2.2(a) EXAMPLE: A large urban school district operates a vocational high school located in an area of the city which is predominantly nonminority. The vocational high school is attended by significant numbers of both minority students and nonminority students. The school has excess capacity. The school district builds and opens a second vocational high school located in an area of the city which is predominantly minority. The new school enrollment is nearly all minority and the original school's enrollment becomes nearly completely nonminority. Under these circumstances the second vocational high school is identifiable as intended for minority students.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
2.2(b) Eligibility based on numerical limiations. A recipient may not adopt or maintain a system of limiting admission to its vocational education program to a fixed number of students from each sending school, program or curriculum area if the system disproportionately excludes or discriminates against students on the basis of race, color, sex, national origin, or handicap. EXAMPLE: A BOCES receives students from eight component districts. Each district has approximately 100 students who want to attend the BOCES and who are eligible. Two of the districts have high concentrations of nonminority students. If, due to the imposition of numerical limits on the component districts, the student composition of the BOCES does not generally reflect the aggregate minority and nonminority population of the component district, it could indicate that this standard has been violated.	OCR Guidelines, Section VI F, 44 FR 17166.	1) Documents that contain admission policies, including administrative or organizational information manuals and student handbooks. 2) Enrollment statistics broken down by race, sex, national origin and handicap. (OERS, OEDS, and the OCR Survey may contain much of this information.) 3) Policy memos, manuals or other documents setting forth numerical limits on admissions and explaining how such limits are applied. 4) Examination of waiting lists for entrance into vocational programs. Interviews with students on the waiting lists and with administrators maintaining lists.

STANDARD

2.2(c) Eligibility based on geographic boundaries.

A recipient may not establish, approve of, or maintain geographic or attendance boundaries for a vocational education program which result in discrimination against students on the basis of sex, race, color, national origin or handicap.

EXAMPLE: A city operates two vocational high schools. Twenty percent of the vocational students in the city are minority and are predominantly enrolled in one vocational high school, while the remaining eighty percent of the vocational students, who are nonminority, are predominantly enrolled in the city's other vocational school. If this results from the recipient drawing boundaries for eligibility to the vocational schools, this standard may be violated.

LEGAL REFERENCE

OCR Guidelines, Section IV C, 44 FR 17165

INFORMATION SOURCES

1) Copies of admissions bulletins or manuals explaining eligibility criteria used by the recipient.

2) Examination of demographic, census, and residential patterns.

3) Interviews with teachers, parents, students.

4) Examination of enrollment statistics of the institution compared with contiguous facilities in the same area.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
2.2(d) Vocational facility renovation and construction. A recipient may not renovate or construct a vocational education facility in a manner that results in or perpetuates unlawful discrimination on the basis of sex, race, color, national origin, or handicap. Any planned renovation or construction shall be performed in a manner designed to eliminate, to the maximum extent feasible, all prior unlawful discrimination. Where renovation or construction of separate facilities is legally permissible, the recipient shall make the facilities comparable. EXAMPLE: A community college wishes to renovate its vocational facility and add a new electrical technology program. Currently, the facility's restrooms are inaccessible to mobility-impaired students and inconvenient for female students. The community college must construct restrooms in the new wing so that they are, on the whole, accessible to mobility-impaired students and as convenient for female students as for male students.	OCR Guidelines, Section IV D, 44 FR 17165.	1) On-site observation of the facility (e.g., adequate ingress and egress for handicapped students; compability of rest rooms and locker rooms.) 2) Description (blueprints) of construction or renovation of the facility. 3) Statistics showing the race/sex/handicap composition of students before and after the construction.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
2.2(e) Accessiblity for handicapped persons. 1) Existing facilities. i) Program accessibility. A recipient shall operate its vocational program or activity, so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons. ii) Methods for achieving accessibility. A recipient may comply with the requirement of subparagraph (i) of this section through such means as redesign or equipment, reassignment of classes or services to accessible buildings, assignment of aids to students, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities accessible	45 CFR 84.22; 45 CFR 104.312	1) On-site observation of the facility. 2) Interviews with counselors, teachers, and students. 3) Minutes of meetings or other documentation indicating the efforts undertaken by the recipient to ensure that its programs are accessible.

to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving accessibility.

2.2(e)(1) In choosing among available methods for achieving accessibility, a recipient shall ensure that handicapped persons are educated with persons who are not handicappped to the maximum extend appropriate.

EXAMPLE: A high school offers all of its welding courses on the third floor of the school. If the third floor is inaccessible to the mobility-impaired student it would be a violation of this standard. The school, however, is not necessarily required to install an elevator or move all of its welding courses from the third floor. It could, for example, offer some welding courses on the first floor or in another area accessible to the mobility-impaired student.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
2.2(e) Accessibility for handicapped persons (con't) 2) New facilities. i) Design, construction and alteration. Each new facility or alteration of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed so that the facility or the altered portion of the facility, is readily accessible to and usable by handicapped persons. ii) American National Standards Institute Accessibility Standards. Design, construction, or alteration of facilities shall be in conformance with State Standards and with the "American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc., (ANSI A117.1-1980). Departures from particular requirements of the ANSI Standards will be permitted when	45 CFR 84.23; OCR Guidelines, Section IV N, 44 FR 17166.	1) On-site observation of new facilities. 2) Interviews with administrators responsible for planning and approving new construction. 3) Documentaion indicating compliance with ANSI standards. 4) Possible review of blueprints.

it is clearly evident that the recipient has provided for equal access to the facility or to the altered portion of the facility.

39

SECTION III -- RECRUITMENT AND ADMISSION

What is the general rule?

No person shall, on the basis of sex, race, color, national origin, handicap or age, be subjected to unlawful discrimination in the recruitment or admissions practices of any vocational education program or activity. (OCR Guidelines, Sections IV and V, 44 FR 17162)

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
3.2(a) Recruitment. A recipient may not develop, sponsor, or engage in any recruiting activity, including the development or dissemination of recruiting materials, that discriminates against or stereotypes persons on the basis of sex, race, color, national origin or handicap. EXAMPLE: A recruiting team from a BOCES visits several high schools to encourage prospective students to enroll in a new electronics program. If the team members address only male students in the high school, this standard would be violated.	OCR Guidelines, Section V C, 44 FR 17167; 45 CFR 84.42 45 CFR 86.23.	1) Interview persons responsible for the recruiting program to obtain a description of the recipient's recruiting process. 2) Copies of recruitment brochures and other information distributed to prospective applicants. 3) Copies of catalogs, bulletins, or other program descriptions circulated for the past two years. 4) Description of the composition of recruiting teams and the roles of each member. 5) Documents indicating organizations and school contacted or visited by recruiters.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
3.2(b) Promotional activities. A recipient may not sponsor or engage in the development of promotional materials or activities that discriminate or stereotype persons on the basis of sex, race, national origin, color or handicap. Promotional activities include, among other things, career days, parent nights, shop demonstrations and visitations by groups of prospective students. EXAMPLE: A high school consistently uses for its career days slidetape presentations that portray students predominantly in occupations which reinforce sex role stereotyping (e.g., depicting only males in automotive courses or only females in home economics courses). The high school has violated this standard.	OCR Guidelines, Section V E, 44 FR 17167; 45 CFR 84.42; 45 CFR 86.23.	1) Description of the recipient's promotional efforts. Interviews with persons conducting promotional activities. 2) Copies of recruitment brochures and other information distributed to prospective applicants. 3) Copies of catalogs, bulletins, or other descriptions circulated for the past two years. 4) Schedules of schools and other places visited for promotional purposes.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
3.2(c) Public notification. 1) Prior to the beginning of each school year or academic semester, a recipient shall issue and appropriate public announcement (e.g., in a local newspaper or in its program bulletin) which advises students, parents, employees and the general public that vocational education opportunities will be offered without regard to sex, race, color, national origin or handicap. A recipient should make all reasonable efforts to issue the announcement at least 30 days prior to the beginning of each school year or academic semester. 2) A recipient shall include in the public announcement the name, address and telephone number of the person designated to coordinate Title IX and Section 504 compliance activities. A recipient should also include a brief summary of program offerings and admissions criteria.	OCR Guidelines, Section IV O, 44 FR 17166; 45 CFR 84.8; 45 CFR 86.9; Lau v. Nichols, 414 U.S. 563.	1) Copies of public announcements describing existing vocational programs and indicating that they are offered without regard to sex, race, color, national origin, or handicap. 2) Records indicating if and when public announcements are aired on radio or television.

45

46

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
3.2(c)Public notification. 3) A recipient whose service area contains a community of persons with limited English language skills shall distribute promotional materials and information, including information on financial assistance, to that community in its native language. 4) A recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons. EXAMPLE: A public high school is located adjacent to a Puerto Rican community containing many persons with limited English language skills. The high school should notify members of the community of its vocational programs and of its nondiscriminatory policy. The notification should be in Spanish. EXAMPLE: A postsecondary institution could designate one or more persons in its admissions office or guidance department to handle inquiries on program accessibility for handicapped persons. This information could also be made available in braille, on tape, or by signers.	OCR Guidelines, Section IV O, 44 FR 17166; 45 CFR 84.8; 45 CFR 86.9; Lau v. Nichols, 414 U.S. 563.	1) Statistics indicating the number of limited English speaking students served by the recipient. 2) If the recipient's service area contains a community of limited English speaking persons, copies of materials which are distributed to that community should be in its native language. 3) Interviews with recruiting personnel.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
3.2(d) Admissions tests or other selection criteria. 1) A recipient may not use any admission test or other selection criterion for entrance into a vocational education course or program that disproportionately excludes applicants on the basis of sex, race, color, national origin, or handicap unless the recipient can demonstrate that the test or criterion has been validated as essential for participation in that particular program. EXAMPLE: A BOCES considers the recommendation of a prospective student's guidance counselor in determining whether to admit the student to a particular course. If women are not generally recommended by counselors for carpentry courses, but men are, the BOCES would have to eliminate consideration of counselors' recommendations unless it could show that the recommentaiton was essential for successful completion of the carpentry course.	OCR Guidelines, Section IV, 44 FR 17165; 45 CFR 80.3; 45 CFR 84.42; 45 CFR 86.21; OCR Policy Memorandum of April 12, 1979.	1) Description of all criteria used in the admission decision process and the relative weights given to each criterion. 2) The names of any tests employed during the past two years to determine eligibility for admission. 3) Test results, broken down by sex/race/national origin/handicap status of applicant. 4) Any data or other evidence the recipient wishes to provide regarding validation of the tests or selection criteria. 5) Interviews with members of admissions committee, registrar's office, etc.

2) A recipient may not discriminate in its admissions practices against persons on the basis of limited English language skills. A recipient operating a secondary vocational education program shall identify applicants with limited English language skills and assess their ability to participate in vocational education.

LEGAL REFERENCE

OCR Guidelines, Section IV L, 44 FR 17166.

INFORMATION SOURCES

1) Descriptions of all tests used in admissions process.

2) Availability of alternative means of administering tests to persons of limited English proficiency.

3) Interviews with members of admissions committee to determine, if interviews are used as an admissions criteria, how they are administered to persons of limited English proficiency.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
3.2(d) Admission tests or other selection criteria. 3) A recipient shall ensure that results of admission tests which are administered to an applicant who has a handicap that impairs sensory, manual or speaking skills, accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure. A test which reflects the applicant's impaired sensory, manual or speaking skills may only be used where those skills are the factors that the test purports to measure. 4) Admission tests that are designed for persons with impaired sensory, manual or speaking skills shall be offered as often and in as timely a manner as are other admission tests. Admission tests for handicapped persons shall be administered in facilities that meet the accessibility requirements of these standards. EXAMPLE: A test for entrance into an advanced carpentry course asks the student to define certain trade-related terminology. If the proctor administers the test by reading the terms orally and then then writing them on a blackboard, hearing-impaired students will not have as much time as other	OCR Guidelines, Section IV, 44 FR 17165; 45 CFR 80.3; 45 CFR 84.42; 45 CFR 86.21; OCR Policy Memorandum of April 12, 1979.	1) Description of all special tests used to admit handicapped students. Interviews with staff who design or administer the tests. 2) Copies of public announcements or postings indicating date and place of scheduled tests for handicapped persons. 3) On-site examination of testing sites. 4) Comparison of test scores achieved by handicapped persons compared with test scores achieved by nonhandicapped persons.

STANDARD

students to respond. In order to administer the test fairly, the proctor should allow the handicapped students longer to finish, provide a signer, or administer the test in writing.

EXAMPLE: A postsecondary vocational institution administers admissions tests for nonhandicapped students at the beginning of every school year. The institution administers special admissions tests to handicapped (blind) students. However, the special admissions tests for blind students are only given every other year. Giving the regular admissions test twice as frequently as the special admissions test probably violates this standard.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
3.2(e) Participation of handicapped students in private vocational programs. 1) A recipient that operates a private vocational education program may not, on the basis of handicap, exclude a qualified handicapped person from the program if the recipient can provide an appropriate education to the handicapped person by making minor adjustments to the program. 2) Subject to subparagraph (3) below, a recipient that operates a private vocational education program may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons unless provision of such education necessitates a substantial increase in cost to the recipient. 3) Recipient licensed private schools and recipient registered private business schools shall comply with Sections 126.2, 126.4 and 126.7 of the Commissioner's regulations when charging costs to handicapped persons. EXAMPLE: A private business school operates a program for stenographers. In order to serve mobility-impaired students, the school purchases a specially equipped desk. It would be permissible under this standard to charge an additional fee to mobility-	45 CFR 84.39; OCR Guidelines, Section IX A, 44 FR 17168; 8 NYCRR 126.2, 126.4, and 126.7.	1) Copies of recruiment brochures, application catalogs, and other information provided to prospective students. 2) Copies of bills provided to handicapped students and bills provided to nonhandicapped students who are similarly situated.

impaired students who use the desk to enable the recipient to recover the added cost of purchase. It would be impermissible to continue charging an additional fee after the recipient recovers the cost of purchasing the desk. (Licensed private schools and registered private businesses would need to have all charges approved by the Commissioner in accordance with the Commissioner's regulations.)

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
3.2(f) Introductory, preliminary or exploratory courses. 1) A recipient may not establish an introductory, preliminary or exploratory course (e.g., industrial arts or home economics) as a prerequisite for admission unless the course is available without regard to sex, race, color, national origin and handicap. 2) A course that was formerly avaialble only on a discriminatory basis may be made a prerequisite for admission to a program only if the recipient can demonstrate that: i) The course is essential to participation in the program, and ii) The course is presently available to those seeking enrollment for the first time and to those formerly excluded. EXAMPLE: A BOCES may not limit enrollment in a metallurgy course to students who have taken industrial arts if the industrial arts course was available only to males in the junior high schools unless the course is essential to participation in the program, and the course is presently made available in the junior high schools to students without regard to sex.	OCR Guidelines, Section V, 44 FR 17167; 45 CFR 80.3.	1) Copies of admissions bulletins or course listings indicating any coursework prerequisites for admission to vocational education programs and courses. 2) Identification of tracking, ability grouping, or other student assignment patterns within schools; data showing sex, race, national origin, and handicap composition of such tracks/groups. 3) A list of students denied admission or counseled against applying for admission due to lack of prerequisites. These students may be identified through interviews with guidance counselors, parents, students, etc. 4) Interviews with counselors or students to discover why certain students do not have the prerequisites.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
3.2(g) Preadmission inquiries. 1) Except as specified in Section 1.4, 1.5 or 4.2(c) of these standards, or upon request by the U.S. Office for Civil Rights, a recipient may not inquire into an applicant's marital status, race, color, national origin or handicap prior to accepting the applicant for admission. A recipient may make a preadmission inquiry as to the sex of the applicant for admission, but only if the inquiry is made equally of applicants of both sexes and if the results of the inquiry are not used in connection with discrimination prohibited by these standards. 2) When a recipient operating a postsecondary program is taking remedial action in accordance with 1.5 to correct the effects of past discrimination or when a recipient is taking voluntary action in accordance with 1.4 to overcome the effects of conditions that resulted in limited participation in its program or activity, the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped provided that: i) The recipient states clearly on any written questionnaire used	45 CFR 84.41; 45 CFR 86.21.	1) Student application forms. 2) Student enrollment statistics. 3) Affirmative action plans. 4) Interviews with admissions personnel, and students or applicants to determine what inquiries are made prior to admission.

for this purpose, or makes clear orally if no written questionnaire is used, that the information requested is intendend for use solely in connection with its remedial action obligations or its voluntary action efforts; and

ii) The recipient states clearly that the information is being requested on a voluntary basis, that it will be confidential, and that refusal to provide it will not subject the applicant to any adverse treatment.

EXAMPLE: A community college uses a preapplication process to inquire about the national origin of applicants. Unless the purpose of this question is to comply with a request from OCR or to enable the recipient to take remedial steps to increase the participation of national origin minorities, the practice would violate this standard.

EXAMPLE: A school district conducts a census to identify the handicapped persons residing in its service area. The results of the census are used to assure that an Individualized Education Program is developed for each handicapped child. These activities

are permissible under this standard because identification and evaluation of handicapped children, and development of I.E.P.'s, are required by Section 4.2(c) of the standards. In addition, these steps would be taken for the purpose of increasing the participation of handicapped persons in the recipient's programs.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
3.2(g)Preadmission inquiries. 3) After an applicant is accepted for admission, a recipient may ask whether the applicant has a handicap that may require accommodation. A recipient shall treat the answer to any such inquiry with confidentiality. EXAMPLE: A community college encloses, with its acceptance letter to an applicant, a form asking whether the student has a handicap which may, for example, require special textbooks. This inquiry is permissible if its purpose is to enable the institution to adequately meet the needs of handicapped students.	45 CFR 84.41; 45 CFR 86.21.	1) Interviews with admissions personnel. 2) Review of student files. 3) Copies of forms students are requested to complete after acceptance for admission.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
3.2(h) Differential treatment based on parental, family or marital status A recipient may not apply any recruitment policy or admissions criterion concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex. EXAMPLE: A day care center operated by a community college refuses to accept children of single men, but accepts children of single women. This practice treats men differently from women, and thus violates this standard.	45 CFR 86.21.	1) Copies of any policies regarding treatment of applicants or students on the basis of parental, family or marital status. 2) Interviews with students, recruiters and admissions personnel. 3) Copies of applications for admissions.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
3.2(i) Pregnancy. A recipient may not exclude a woman from admission to, or participation in, any vocational program on the basis of pregnancy, childbirth, termination of preganancy or recovery therefrom, or treat the pregnancy or childbirth differently from any other temporary disability. EXAMPLE: A high school that requires pregnant females to drop out of any course or the school, or requires them to attend a special program because they are pregnant, is in violation of this standard. It is permissible, however, for the recipient to offer a voluntary tutoring program for the pregnant student.	45 CFR 86.21.	1) Examination of records explaining reasons for student expulsion from a course or program. 2) Review of admissions files indicating whether applicants are denied admission because of pregnancy. 3) Interviews with pregnant applicants or students.

SECTION IV -- TREATMENT OF STUDENTS IN VOCATIONAL EDUCATION PROGRAMS, SERVICES AND ACTIVITIES

What is the general rule?

No person shall, on the basis of sex, race, color, national origin, handicap or age be excluded from admission to, participation in, denied the benefits of, or be subjected to unlawful discrimination in any vocational education program, service, or activity operated by a recipient or supported directly or through contractual or other arrangements by a recipient.
(OCR Guidelines, Section IV, 44 FR 17165)

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
4.2(a) Program requirements.		
1) A recipient may not use or adopt academic requirements for participation in or completion of a vocational education program that discriminate on the basis of sex, race, color, national origin or handicap.	OCR Guidelines, Section IV, 44 FR 17165; 45 CFR 86.31; 45 CFR 80.3; 45 CFR 84.43.	1) Course or program enrollment statistics broken down by sex, race, national origin, and handicap.
2) To the extend a recipient imposes academic requirements, it shall modify those requirements as necessary to ensure that the requirements do not discriminate on the basis of handicap against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to a given program of instruction or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section Modifications may include substitution of specific courses required for the completion of graduation or degree requirements, and adaptation of the manner in which specific courses are conducted All modifications shall be made in a manner that does not violate State law or regulations.	OCR Guidelines, Section IV N, 44 FR 17166; 45 CFR 84.44.	2) List of academic requirements for entrance or graduation from the program or course. 3) Explanation of any academic modifications that are made to accommodate handicapped students.
EXAMPLE: A requirement for completion of a secondary auto-mechanics course is that students dismantle and then reassemble an engine within a specified number		

of days. The requirement should be reasonably modified or the time period should be reasonably extended if necessary to meet the needs of a handicapped students.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
4.2(a)Program requirements. 3) A recipient shall ensure that no handicapped student is discriminated against in its vocational education program or activity because of the absence of educational auxiliary aids for students with impaired sensory, manual or speaking skills. Recipients are not required to provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature unless provided for in the student's Individualized Education Program. 4) A recipient may not impose upon handicapped students rules that limit their participation in the recipient's vocational education program or activity. For example, a recipient may not prohibit handicapped persons from using tape recorders or guide dogs in classrooms or campus buildings. EXAMPLE: A high school denies a sight-impaired student admission to the marketing class in its distributive education program. If admission is denied due to the unavailability of large print textbooks necessary for this student to participate in this course, the high school may be in violation of this standard.	45 CFR 84.44.	1) Review of randomly selected IEP's to determine whether students need auxilliary aids and services. 2) Interviews with handicapped students. 3) Review of records documenting the types of auxilliary aids provided by the recipient.

75

76

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
4.2(b) Guidance and counseling.		
1) A recipient may not counsel students to enroll in a particular course or program or measure or predict a student's prospects for success in any course or program on the basis of the student's sex, race, color, national origin, or handicap.	OCR Guidelines, Section V B, 44 FR 17167; 45 CFR 84.37; 45 CFR 86.3.	1) Description of all pre-enrollment counseling received by students. 2) Interviews with counselors to understand their views regarding appropriate vocational goals for minority, female, and handicapped students and an explanation of the reasons for any differences in appropriate goals.
2) A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials are shown to be essential to eliminate sex bias. Where the use of a counseling test or other instrument results is a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that the disproportionate number is not the result of unlawful discrimination in the instrument or its application.	45 CFR 86.36.	3) Examples of diagnostic tests used in counseling. 4) Description of internal procedures used to review counseling materials to assure that they do not discriminate. 5) Interviews with students in predominantly segregated programs. 6) Review of counseling materials.
EXAMPLE: A recipient whose guidance counselors use career guidance tests with separate components for females and males is in violation of this standard unless the tests		

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
are designed, for example, to introduce women to auto mechanics or men to health occupations. EXAMPLE: A student has limited use of one arm due to a childhood disease. The student wishes to enroll in a bricklaying course. It is permissible under this standard to advise the student that many of the tasks essential to bricklaying require the full use of two arms and therefore the student may not be able to perform these tasks.		1) Interview with person(s) who counsels students with limited English speaking skills. 2) Interview with person(s) who counsels hearing-impaired students. 3) Interview with students with limited English language skills and with hearing-impaired students.
3) A recipient serving a student(s) identified as having a primary language other than English shall: i) Employ a counselor(s) who is (are) able to effectively communicate with students with limited English speaking skills; or ii) Provide an interpreter(s) who is (are) able to communicate with students of limited English speaking skills.	OCR Guidelines, Section V D, 44 FR 17167; OCR "Lau Remedies", 1975.	
4) A recipient shall ensure that counselors can communicate effectively with hearing-impaired students. This requirement may be satisfied by having a signer available.	OCR Guidelines, Section V D, 44 FR 17167.	

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
4.2(c) Special rules protecting handicapped children.	OCR Guidelines, Section IV A, 44 FR 17167; 45 CFR 84.32; 8 NYCRR 200.12.	1) Documenation of procedures to identify handicapped students. 2) Ransom samples of individualized educational programs for handicapped students. 3) Description of process used to develop individual education programs.
1) Identification of handicapped children. Each recipient school district shall locate and identify all handicapped children who reside in the district in accordance with §200.12 of the Commissioner's Regulations.		
2) Individualized Education Program. Each recipient school district shall ensure that an individualized education program is developed for each handicapped pupil in accordance with §200.4(f) of the Commissioner's Regulations.	OCR Guidelines, Section IV A, 44 FR 17167; 45 CFR 84.36; 8 NYCRR 200.4(f).	
3) Procedural safeguards. A recipient school district shall ensure that evaluation and placement of handicapped students is accomplished in accordance with the procedural guarantees contained in §200.5 of the Commissioner's Regulations.	OCR Guidelines, Section VI A, 44 FR 17167; 45 CFR 84.36; 8 NYCRR 200.5.	
EXAMPLE: A BOCES accepts a handicapped student from a component district and assigns the student to a special vocational course. The student does not have an Individualized Education Program. In this example, both the sending school district and the BOCES would be violating Section 4.2(c)(2).		

EXAMPLE: A high school believes a child is handicapped and its committee on the handicapped administers a special test designed to measure the extent of the child's handicap. When the results are available, the parents are notified that the child may be placed in a special program. This practice violates Section 4.2(c)(3) because the parents must be notified prior to initiating a preplacement evaluation.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
4.2(d) Least restrictive environment. 1) A recipient shall ensure that each qualified handicapped person it serves is educated with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. This means that a recipient shall place a handicapped person in the regular education environment operated by the recipient unless the education of the person in the regular environment, even with the use of supplementary aids and services, cannot be achieved satisfactorily. 2) Whenever a recipient places a person in a setting other than the regular education environment, the recipient shall attempt to place the person in a facility as close to the student's home as possible. 3) A recipient shall comply with §200.4 of the Commissioner's Regulations when forming a special class for handicapped students under the age of 21. 4) In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals and recess period, a recipient shall ensure that handicapped persons participate with nonhandicapped	45 CFR 104.312; 45 CFR 84.34 and 43; OCR Guidelines, Section VI A, 44 FR 17167; 8 NYCRR 200.4.	1) Examination of IEP's to determine what supplementary aids and services are needed. Documentation indicating that the services have been provided. 2) Identification of all nonacademic and extracurricular services and activities offered, and whether they are open to both handicapped and nonhandicapped students. 3) Location and description of separate programs, facilities, and services. 4) Enrollment of handicapped students in prevocational programs and specialized education programs such as work experience for the past three years. Identification of such handicapped students who have advanced to a regular program through a review of student records and interviews.

STANDARD

persons in these activities and services to the maximum extent appropriate to the needs of the handicapped person.

5) All facilities, services, programs, and activities provided to handicapped persons shall be comparable to those which the recipient provides to nonhandicapped persons.

EXAMPLE: A mobility-impaired student should normally be educated in the same setting as a nonmobility-impaired student. It would be a violation of this requirement for a BOCES to exclude a handicapped student from the regular instructional classroom solely because the student requires a special desk.

EXAMPLE: A postsecondary institution has several elementary agricultural courses. The institution moves one such course to the first floor to accommodate students in wheelchairs. It would be a violation of these standards for the institution to concentrate handicapped students with no mobility impairments in the same class.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
4.2(e) Student evaluation. 1) A recipient may not discriminate against persons on the basis of sex, race, color, national origin or handicap in selecting or administering a test or evaluation to assess student performance in a course or program. 2) A recipient shall select and administer examinations or evaluate the achievements of students who have a handicap that impairs sensory, manual or speaking skills so that the results of the examination or evaluation represent the student's achievement in the course rather than reflecting the student's impaired sensory, manual or speaking skills, except where such skills are the factors that the test purports to measure. EXAMPLE: When administering a written competency examination in electronics, a community college should either allow a sight-impaired student a longer period of time to complete the examination or give the examination in braille or larger print, as appropriate to the student's impairment.	45 CFR 84.44; 45 CFR 80.3; 45 CFR 86.31.	1) Description of evaluation procedures. 2) Identification of all student scores broken down by sex, race, national origin, and handicap. Evidence of test validation where necessary. 3) Stated purpose of tests or evaluative material utilized, and the identification of the educational skills the instrument purports to assess. 4) Identification of special tests and testing media utilized for handicapped students; identification of what the test specifically purports to measure.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
4.2(f) Student organizations. 1) Membership in vocational education organizations, operated, administered or sponsored by a recipient shall be available to all students in the instructional program without regard to sex, race, color, national origin, or handicap. 2) A recipient may not charter or otherwise provide assistance to a student organization that discriminates in violation of paragraph (1) above. EXAMPLE: A BOCES may not allow its facilities to be used by a chapter of the Future Homemakers of America if the chapter restricts its members to women only.	45 CFR 104.513; 45 CFR 84.47.	1) Membership data for each school sponsored or chartered organization. 2) Copies of policies or regulations concerning student organizations. 3) Copies of student handbook or other information describing student organizations. 4) Interviews with student members and nonmembers.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
4.2(g) <u>Cooperative vocational education, work-study, apprenticeship training, and job placement</u>. 1) A recipient may not discriminate on the basis of sex, race, color, national origin or handicap in placing students in cooperative vocational education, work-study, or apprenticeship training programs or in providing other job placement services. 2) A recipient may not enter into any arrangement with an agency, union, business or other sponsor that discriminates against the recipient's students on the basis of sex, race, color, national origin or handicap in recruitment, hiring, placement, assignment to work tasks, hours of employment, levels of responsibility or in pay. 3) Any written agreement for the referral or assignment of students under a cooperative, work-study or apprenticeship program must contain an assurance from the union, sponsor, or employer that students will be accepted and assigned to jobs and otherwise treated without regard to sex, race, color, national origin or handicap.	OCR Guidelines, Section VII, 44 FR 17167; 45 CFR 104.515; 45 CFR 80.3; 45 CFR 86.31; 45 CFR 84.11 and 46.	1) Cooperative work-study and apprenticeship training enrollment data broken down by sex, race, national origin, and handicap. 2) Interviews with administrators to determine procedures the recipient uses to ensure that students are not unlawfully discriminated against. 3) Record indicating job titles, major and minor areas of training, number of hours employed per week, and entry salary for students participating in these programs. 4) List of unions, businesses, etc. with which the recipient coordinates activities. 5) Examination of written agreements.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
4.2(g) Cooperative vocational education, work-study, apprenticeship training, and job placement.		
EXAMPLE: A community college would violate this standard if it allowed only nonhandicapped students to participate in its work-study program.		
EXAMPLE: A trade union informs a BOCES that it has available three positions under a cooperative vocational program for carpenters. The union discriminates against women in its membership practices. The BOCES may not refer students to this trade union.		
4) A recipient which employs its own students (e.g., in a work-study program) shall also comply with the standards for employment set out below under Section V.	OCR Guidelines, Section VII, 44 FR 17167.	1) Statistics on students broken down by sex, race, national origin, and handicap participating in work-study.
EXAMPLE: A recipient that fails to make reasonable accommodations necessary for eligible handicapped students to participate in its work-study program is in violation of this standard.		2) Interview with personnel responsible for administering the work-study program.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
4.2(h) Student housing and facilities. 1) A recipient may not discriminate on the basis of sex, race, color, national origin, or handicap in making available housing opportunities to its students. Separate residential facilities for males and females are permissible as long as the recipient makes comparable facilities available to both sexes. 2) A recipient may not enter into an agreement with an outside vendor or other organization for the provision of on-campus or off-campus housing if the vendor or other organization discriminates on the basis of sex, race, color, national origin or handicap in making available comparable housing to students without regard to sex or handicap. 3) A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.	OCR Guidelines, Section VI C, 44 FR 17167, 45 CFR 84.45; 45 CFR 86.32; 45 CFR 80.5.	1) Statistics on the student composition of housing facilities. 2) Examination of housing admissions forms and housing policies. 3) Interviews with students. 4) Interviews with outside vendors cooperating with the recipient to provide student housing.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
4.2(i) Financial assistance. 1) A recipient may not discriminate on the basis of sex, race, color, national origin, or handicap in providing student financial assistance in the form of loans, grants, scholarships, special funds, subsidies or prizes, except as provided in subparagraph (3) and (4) below. 2) A recipient may not assist any entity or person that provides financial assistance to the recipient's students if the financial assistance is provided in a manner that discriminates on the basis of sex, race, color, national origin, or handicap. 3) A recipient may administer financial assistance established by will, trust, bequest, or a similar legal instrument that requires awards to be made to members of a particular sex provided that the overall effect of the award of such sex-restricted assistance does not discriminate on the basis of sex. 4) A recipient may administer financial assistance established by will, trust, bequest or similar legal instrument that requires awards to be made on the basis of factors that discriminate or have the effect of discriminating on	OCR Guidelines, Section VI B, 44 FR 17167; 45 CFR 80.3; 45 CFR 84.46; 45 CFR 86.37.	1) Examination of bulletins describing criteria utilized for the award of financial assistance. 2) Number of students receiving financial assistance by race, national origin, sex, and handicap. 3) Explanation of procedures to make limited English speaking and handicapped persons aware of financial assistance opportunities.

STANDARD

the basis of handicap only if the overall effect of the award of such assistance is not discriminatory on the basis of handicap.

EXAMPLE: A community college may not create a scholarship fund to be awarded annually "to the young man most likely to develop innovative farming techniques" because the scholarship is limited to men. On the other hand, if a scholarship fund with similar restrictions is established by a private individual under the terms of a will, the institution may adminster the award only if the overall effect of such sex-restricted financial assistance administered by the recipient is nondiscriminatory on the basis of sex.

SECTION V -- EMPLOYMENT

What are the general rules?*

a) A recipient may not engage in any employment practice prohibited under Section 5.2 below if the employment practice discriminates against persons on the basis of handicap or sex. (45 CFR 84.11; 45 CFR 86.31)

EXAMPLE: A mobility-impaired teacher applies for a vacant faculty position in a vocational program. If the applicant is otherwise qualified for the position, it is impermissible to refuse the applicant employment because of the mobility-impairment.

EXAMPLE: A female administrator may not be paid less than a male administrator for similar work performed under similar conditions.

b) A recipient may not engage in any employment practive prohibited under Section 5.2 below if the employment practice tends to result in segregation, exclusion or other unlawful discrimination against students on the basis of race, color or national origin. (45 CFR 80.3)

EXAMPLE: A recipient school district assigns minority faculty members to predominantly minority schools and nonminority faculty members to predominantly nonminority schools. This practice may tend to perpetuate or result in segregation of student and is therefore prohibited.

c) Where a primary purpose of Federal financial assistance to a program is to provide employment, a recipient may not engage in any employment practice prohibited under Section 5.2 below if the employment practice discriminates against persons on the basis of race, color or national origin. (45 CFR 80.3)

*The general rules set out herein delineate the scope of employment discrimination that is prohibited. It is important to note, however, that other provisions of Federal and State law may prohibit acts of employment discrimination which are not covered by the general rules (e.g., Title VII of the Civil Rights Act of 1964).

EXAMPLE: Section 121 of the Vocational Eduction Act authorizes the use of funds for work-study programs. The primary purpose of funds used under Section 121 is therefore to provide employment. Accordingly, a recipient establishing a work-study program under Section 121 may not discriminate on the basis of race, color or national origin in employing students in the program. (The recipient is also prohibited from discriminating on the basis of sex or handicap by rule (a) above.)

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(a) Employment tests or other selection criteria. A recipient may not use any employment test or other selection criterion that disproportionately excludes applicants on the basis of sex, race, color, national origin, or handicap unless the recipient can demonstrate that the test or other selection criterion validly predicts successful job performance. EXAMPLE: A person with a speech impediment may be qualified for jobs that do not require one to speak clearly. Yet the person may be unable to perform well on an oral test given by the employer. Since it is unlikely that the results of an oral test would accurately predict the handicapped person's job performance, the employer should either eliminate the test or administer it to this particular applicant in a different manner. One way of doing this would be to give the test in writing.	45 CFR 84.13; 45 CFR 86.52; 45 CFR 80.3.	1) Description of criteria utilized by the recipient to select employees and a statement of relative weights given to the various criteria. 2) Description of employment tests, if any, that the recipient relies upon. 3) Recent applications for employment, indicating who was hired and who was rejected. If sufficient information regarding reasons for accepting or rejecting applicants is unavailable, it may be appropriate to telephone or interview selected applicants who were rejected. 4) Description of the recipient's employees broken down by sex, race, national origin, and handicap. 5) If the test disproportionately excludes applicants, evidence that the test validly predicts successful job performance.

102

103

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(b) Employment inquiries. 1) Preemployment inquiries-general. A recipient may not inquire into an applicant's marital status, sex, race,color, national origin, or handicap prior to extending an offer of employment to the applicant. A recipient may inquire into an applicant's ability to perform an essential job-related function prior to extending an offer of employment. EXAMPLE: Job application forms which a school district requires prospective teachers to complete may not ask whether the applicant is "Miss or Mrs." The application forms may, however, ask whether the applicant is male or female, provided that all applicants are asked for the same information and the school district does not base any employment decision on that information. EXAMPLE: If demonstrating the operation of a lathe is an integral part of teaching a woodworking course, an employer may ask applicants whether they can operate the lathe. The employer may not ask, however, whether the applicant is mobility-impaired.	45 CFR 86.60; 45 CFR 84.14; 45 CFR 80.3.	1) Application forms used by the recipient. 2) Copies of interview forms or lists of questions asked of applicants. 3) Possible telephone inquiries or interviews with unsuccessful applicants.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(b) Employment inquiries.	45 CFR 86.60; 45 CFR 84.14; 45 CFR 80.3.	1) Application forms used by the recipient.
2) Preemployment inquiries-handicapped persons. Prior to extending any offer of employment, a recipient may invite applicants to indicate whether they are handicapped only under the following circumstances: i) The recipient is taking mandatory or voluntary remedial action in accordance with section 1.4 or 1.5; ii) The recipient states clearly on any written questionnaire used for this purpose that the information will be used solely in connection with its mandatory or voluntary remedial actions efforts; and iii) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, and that refusal to provide it will not subject the applicant or employee to any adverse treatment. EXAMPLE: A school district had not hired handicapped teachers in the past because its vocational facilities were inaccessible. Recently, however, several facilities have undergone minor structural modifications		2) Copies of any affirmative action plans under which the recipient is operating. 3) Copies of interview forms or lists of questions asked of applicants. 4) Documentation from recipient illustrating how handicapped applicants receive favorable treatment as a result of the pre-employment inquiries. 5) Possible telephone inquiries or interviews with unsuccessful applicants. 6) Application forms or follow-up questionnaires used by the recipient. 7) Copies of standard forms used to extend job offers and other forms sent to successful job applicants.

106

107

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(b) Employment inquiries. and they are now accessible. The school district may ask applicants for teaching positions whether they are handicapped and give preference to those who are if it follows the procedures outlined above.		
3) Inquiries made after employment. After an employee has been selected, a recipient may ask whether the person has a handicap that may require accommodation. A recipient shall treat the answer to any such inquiry with confidentiality.	45 CFR 86.50; 45 CFR 84.14; 45 CFR 80.3.	1) Interviews with personnel specialists. 2) Copies of relevant forms employees are asked to complete.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(b) Employment inquiries. 4) Medical examinations. i) A recipient may condition an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty only if: A) All entering employees must take such an examination; and B) The results of such an examination are used only in accordance with the requirements of Section V of these standards. ii) Information obtained from medical examinations shall be collected and maintained on separate forms and accorded confidentiality as medical records, except that: 110 A) Supervisors and managers may be informed regarding necessary accommodations and restrictions on the work or duties of handicapped persons;	45 CFR 84.14.	1) Application forms and other forms used to process applicants; copies of any directives regarding medical examinations. 2) If medical examinations are required; a review of the recipient's employee files. 3) Interviews with applicants, employees, and personnel specialists; if the recipient has a doctor or refers applicants to a doctor or clinic, possible interviews with those doctors. 4) Records showing which applicants were rejected/accepted on the basis of medical examinations along with the reasons for the recipient's decision. 5) Copies of policies or procedures to maintain confidentiality of medical information. 111

B) First aide and safety personnel may be informed of any condition that might require emergency treatment; and

C) Federal and State officials investigating compliance with civil rights laws shall be provided relevant information upon request.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(c) Reasonable accommodation for handicapped employees. A recipient shall make reasonable accommodations to the know handicapping condition of an applicant or employee. A recipient need not accommodate the person's handicapping condition if making the accommodation would impose an undue hardship on the operation of the recipient's program. In determining whether an accommodation is reasonable (i.e., whether or not it imposes an undue hardship), the following factors shall be considered: 1) The size of the recipient's program, including the number of employees, number and type of facilities, and size of budget; 2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and 3) The nature and cost of the accommodation needed. EXAMPLE: If a school offers a welding course in a classroom which is inaccessible to a qualified teacher using a wheelchair, it should reschedule classroom assignments and offer the course in a classroom that is accessible to the handicapped teacher. Alternatively, the school should make appropriate minor structural modifications (e.g., building	45 CFR 84.12.	1) Description of recipient's employees who are handicapped. 2) Documentation indicating what accommodations have been made and what accommodations have been refused. 3) For all accommodations that have been refused, documentation that the accommodation would have imposed an undue hardship. 4) Interviews with administrators, handicapped applicants, and employees to identify the types of accommodations that were requested, the procedures for handling the requests, and the ultimate decisions that were made.

a ramp or widening a doorway)
to make the classroom accessible.

5.2(c) EXAMPLE: A small high school offers only two vocational courses. A sight-impaired teacher applies for an opening to teach one of the courses. In order to be effective, the teacher requires a full-time reader. This accommodation may impose an undue hardship on the high school because of its limited program and small budget.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(d) Recruitment and advertising for employment. A recipient may not recruit or advertise for employees in a manner that discriminates on the basis of sex, race, color, national origin, or handicap. A recipient may not limit recruitment to single-sex or segregated schools, companies or communities except for the purpose of taking remedial actions in accordance with section 1.5 of these standards. EXAMPLE: Announcements advertising teaching positions in the health occupations department may not invite only females to apply in or be posted in only single-sex institutions or programs.	45 CFR 86.59; 45 CFR 86.53; 45 CFR 84.11; 45 CFR 80.3.	1) Copies of job descriptions and locations where they are posted. 2) Description of recruiting efforts; possible interviews with persons doing recruiting. 3) Examination of all recruiting and advertising materials. 4) Review of recruiting schedule for prior years and current year.

116

117

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(e) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination and rehiring. A recipient may not hire, upgrade, promote, award tenure to, demote, transfer, layoff, terminate, or rehire any employee on the basis of sex, race, color, national origin, or handicap.	45 CFR 85.61; 45 CFR 84.11; 45 CFR 80.3.	1) Civil Service laws, regulations, and policies. 2) Records, broken down by sex, race, national origin, and handicap indicating the rates at which employees have been promoted, awarded tenure, demoted, transferred, etc. 3) Descriptions and other relevant policies and procedures outlining the recipient's system for assigning and classifying jobs, etc. 4) Explanation and justification for utilization of any of the above practices that appear to result in disparate treatment.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(f) Salaries or other compensation. A recipient may not, on the basis of sex, race, color, national origin, or handicap, engage in any practice that: 1) Makes distinctions in salaries or other compensations; or 2) Results in different compensation for work requiring equal skills, effort, and responsibility, and performed under similar working conditions.	45 CFR 86.54; 45 CFR 84.11; 45 CFR 80.3.	1) Civil Services laws, regulations, and policies. 2) A list of the salaries earned by the recipient's employees. 3) Descriptions of medical insurance plans, availability of recreational facilities, and other fringe benefits avaialble by virtue of employment. 4) As appropriate, interviews with administrators and employees to determine what fringe benefits the recipient makes available.

STANDARD	LEGAL REFERENCE
5.2(g) Job assignments, job classifications, organizational structures, position descriptions, lines of progression and seniority lists. A recipient may not classify a job, maintain or establish separate lines of progression, seniority lists, career ladders or tenure systems for similar jobs on the basis of sex, race, color, national origin or handicap. EXAMPLE: A high school may not classify a teaching position in a disruptive vocational education class for special students as being for males only.	45 CFR 86.55; 45 CFR 84.11; 45 CFR 80.3.
5.2(h) Leave of absence, sick leave, leave to care for children, or any kind of leave. A recipient may not engage in any practice that discriminates against employees on the basis of sex, race, color, national origin, or handicap in the granting or withholding of leave. EXAMPLE: A female administrator may not be granted leave to care for her children while a similarly situated male administrator is denied leave to care for his children.	45 CFR 86.51; 45 CFR 84.11; 45 CFR 80.3.

INFORMATION SOURCES

1) Description of the recipient's policies and practices with respect to granting or withholding leave.

2) Copies of directives and policies regarding leave.

3) Possible review of personnel files.

4) Interviews with administrators regarding leave policies.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(i) Decisions based on marital or parental status. A recipient may not apply any policy or take any employment action which discriminates on the basis of actual or potential marital, parental, family, household, or principal wage-earner status of employees or applicants.	45 CFR 86.57.	1) Copies of any policies or descriptions of practices affecting divorced, single parents, displaced homemakers, pregnant, and temporarily disabled employees. 2) Examination of application forms and interview questions asked of applicants.
5.2(j) Pregnancy. 1) A recipient may not discriminate on the basis of pregnancy against any employee or applicant for employment. 2) A recipient shall treat pregnancy as any other temporary disability for all job-related purposes, including the granting or termination of leave. 3) A recipient may not establish an arbitrary point in pregnancy for commencement of maternity leave or establish an arbitrary minimum period of time for duration of such leave. 4) A recipient shall permit a pregnant employee to continue working as long as she is physically able to perform the duties of her position and shall permit her to return to work as soon as she is physically able to resume performance of her duties.	45 CFR 86.57.	3) Possible interviews with administrators and employees, particularly pregnant employees.

STANDARD	LEGAL REFERENCE
5.2(j) EXAMPLE: A recipient may not require pregnant employees to secure a doctor's certificate before returning to work following pregnancy, while employees need not obtain such certificates to return following other temporary disabilities.	
5.2(k) Fringe benefits.	45 CFR 86.56; 45 CFR 84.11; 45 CFR 80.3.
A recipient may not:	
1) Make fringe benefits available differently to employees or to employees' spouses, families, or dependents on the basis of the employee's sex, marital statis, race, color, national origin, or handicap; or	
2) Administer, operate, offer or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex, marital status, race, color, national origin, or handicap.	

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(l) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities. A recipient may not discriminate on the basis of sex, race, color, national origin, or handicap in selecting or supporting individuals financially for any type of employment related training or activity. EXAMPLE: A BOCES may not adopt a policy whereby only female teachers may attend a regional conference to discuss recruiting women and girls into nontraditional vocational programs.	45 CFR 84.11; 45 CFR 86.51; 45 CFR 80.3.	1) Description, broken down by sex, race, national origin, and handicap, of employees who have attended recent conferences, participated in internship programs, received special job-related training, etc. 2) If there appears to be disproportionate numbers of nonminority persons selected by these activities, explanations for underrepresentation of members of protected groups. 3) Copies of policies regarding the selection process with respect to opportunities for professional development.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(m) Employer-sponsored activities, including social or recreational programs. A recipient may not sponsor any activity which has the effect of discriminating against employees on the basis of sex, race, color, national origin, or handicap. EXAMPLE: A school district may not sponsor a bowling team and allow only men to participate on the team.	45 CFR 84.11; 45 CFR 86.51; 45 CFR 80.3.	1) Description of activites sponsored by the employer. 2) Statement of eligibility criteria for allowing employees to participate in the activities. 3) List of employees participating in the activities along with the list of any employees who are excluded. 4) Copies of any bulletins, etc., which announce employer-sponsored recreational and social programs.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(n) Membership on planning or advisory councils. A recipient may not discriminate on the basis of sex, race, color, national origin, or handicap in selecting or recruiting members of planning or advisory councils. The membership of a recipient's local advisory council on vocational eduction shall generally reflect the percentage of men, women, and racial and ethnic minorities in the work force of the area served by the recipient.	45 CFR 104.111; 45 CFR 80.3.	1) Composition of the workforce, as well as the general population, in the area served by the recipient, broken down by sex, race, national origin, and handicap. 2) Composition of the recipient's local advisory council, broken down by sex, race, national origin, and handicap. 3) Interviews with members of the councils. Descriptions of any planning or advisory councils the recipient participates in or utilizes, broken down by sex, race, national origin, and handicap. 4) Profile of how composition of advisory councils has changed since FY 1978.

131

132

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
5.2(o) Sex as a bona fide occuptional qualification. A recipient may make employment decisions on the basis of sex if the recipient can demonstrate that sex is a bona fide occupational qualification directly related to the employment function in question. Sex is a bona fide occupational qualification only when consideration of sex is essential to successful performance of the employment function concerned. EXAMPLE: A recipient may not allow only men to apply for a teaching position in a shop class since women may be equally or better qualified to teach the necessary skills. In this case, sex is not a bona fide occupational qualification. EXAMPLE: A vocational high school provides separate locker rooms for males and females. A bona fide occupational qualification for an attendant in the female locker room, while it is in use, may be that the attendant is female. The same principle applies to male attendants in the male locker room. NOTE: The BFOQ exception is very narrow.	45 CFR 86.61.	1) A description of any jobs for which sex is considered a BFOQ. 2) Interviews with administrators and a review of job titles and position descriptions.

SECTION VI -- AGE DISCRIMINATION

What is the general rule?

No person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any vocational education program or activity. This means that a recipient may not use age distinctions or take any other actions which have the effect , on the basis of age, of excluding individuals from benefits or denying or limiting their opportunity to participate in any vocational educational program. (45 CFR 90.1)

EXAMPLE: A local education agency operates a comprehensive high school offering academic and vocational curricula. The school cannot adopt a policy of limiting participation in the vocational education program to students in specific age brackets (e.g., only permitting persons over 16 or in grades 11 or 12 to participate in the vocational program), unless permitted by the exceptions to this rule.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
6.2 What are the exceptions to the general rule? A recipient may, under the circumstances set forth in paragraph (a), (b) or (c), use age distinctions or take action which has the effect, on the basis of age, of excluding individuals from benefits or denying or limiting their opportunity to participate in a vocational education program or activity.	45 CFR 90.14.	1) Copies of course catalogues describing eligibility qualifications and admissions criteria. 2) Interviews with admissions personnel. 3) Examination of statutes or ordinances which the recipient offers as justification for using age distinction.
a) Under any law. It is not a violation of the general rule if the age distinction, which conditions vocational eduction benefits, is contained in a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body. EXAMPLE: Section 121 of the Vocational Education Act limits participation in work-study programs to persons between the ages of 15 and 21. Since this age distinction is contained in a Federal statute, it is a permissible age distinction.		
b) Necessary for the normal operation or statutory objective. 1) It is not a violation of the general rule if the age distinction is necessary to:	45 CFR 90.14.	1) Copies of course catalogues describing eligibility qualifications and admissions criteria. 2) Interviews with admissions personnel.

STANDARD	INFORMATION SOURCES
i) The normal operation of the vocational education program; "normal operation" means the operation of a vocational education program or activity without significant changes that would impair its ability to meet its objectives; or	3) Examination of documentation stating the objectives of the vocational programs.
ii) The achievement of any expressly stated statutory objective of a vocational education program or activity; "statutory objective" means any purpose or the vocational education program or activity expressly stated in any Federal statute, State statute or local statute.	4) Examination of any statute(s) referred to by the recipient to indicate that the age distinction is used to further the statutory objective.
2) For the purpose of subparagraph (1), age may be necessary to the normal operation or the achievement of any statutory objective of a program or activity if:	
i) Age is used as a measure or approximation of one or more other characteristics (e.g., maturity);	
ii) The other characteristic(s) must be measured or approximated in order for the normal operation of the vocational education program or activity	

138

139

to continue, or to achieve any statutory objective of the program or activity;

iii) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

iv) The other characteristic(s) are difficult, costly, or otherwise impractical to measure directly.

EXAMPLE: A vocational education youth organization imposes a maximum age limit on membership. The organization claims that it has an objective, the training, education, and character development of youth. This maximum age limit would be a permissible use of age which is related to the normal operation of the program because:

(1) Age is used as a measure of the need for training, education, and character building experiences preparing for the assumption of adult responsibility;

(2) The need for the service must be measured in order for the youth organization's objective to be met;

(3) Age is highly related to the need for this service and, is thus, a reasonable measure of it; and

STANDARD

(4) It is not practical to measure this need on an individual basis (i.e., while some persons over the age limit might benefit from the service and some persons under the age limit might not need it, there is no practical way to identify those persons on an individual basis).

EXAMPLE: Statutory objective. A city council enacts an ordinance which provides day care services in city facilities up to the age of maturity. A community college in the city permits only its students with children under 16 to use these day care services. This age limit would be a permissible use of age necessary to the achievement of the city ordinance because:

(1) Age 16 is used as an approximation of maturity;

(2) It is necessary to approximate maturity to meet the statutory objective;

(3) Age is a reasonable measure of the time period normally required for a person to reach maturity; and

(4) It is impractical to measure each individual's maturity directly.

STANDARD	LEGAL REFERENCE	INFORMATION SOURCES
6.2 What are the exceptions to the general rule? c) Factors other than age. It is not a violation of the general rule if a recipient takes an action that, although based on a factor other than age, results in a disproportionate impact on the basis of age. The factor other than age must bear a direct and substantial relationship to the normal operation of the vocational education program or activity or the the achievement of a statutory objective. EXAMPLE: A BOCES and roofing company operating a cooperative program for roofers that uses a physical fitness test as a factor for selecting participants to enter the program. The program involves frequent heavy lifting and other demands for physical strength and stamina. Even though older person might fail the test more frequently than younger persons, the physical fitness test measures a characteristic that bears a direct and substantial relationship to the program for which persons are being trained, and therefore, is a permissible action.	45 CFR 90.15.	1) Copies of course catalogues describing eligibility qualifications and admissions criteria. 2) Interviews with admissions personnel. 3) Examination of documentation stating the objectives of the vocational program. 4) Examination of any statute(s) referred to by the recipient to indicate the action's relationship to the achievement of a statutory objective.

STANDARD	LEGAL REFERENCE
6.3 Employment practices. Employment practices using age distinctions are not covered by the general rule prohibiting age discrimination except for any vocational program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act.	45 CFR 90.3.

DEFINITIONS

Action means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

Age means the number of elapsed years from the date of a person's birth.

Commissioner means Commissioner of Education.

Construction means:

1) Construction of new buildings;
2) Acquisition, expansion, remodeling, renovation, and alteration of existing buildings;
3) Site grading and improvement; and
4) Architect fees.

Department means the New York State Education Department.

Discrimination means any action which differentiates or distinguishes among persons or limits or denies a person or a group of persons opportunities, privileges, roles, or rewards on the basis of their race, color, national origin, sex, handicap, or age.

Disproportionate exclusion means an exclusion rate for any race, color, national origin, sex, handicap, or age group which is significantly greater than the exclusion rate for the group with the lowest exclusion rate.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or other arrangement by which the Federal government provides or otherwise makes available assistance in the form of:

1) Funds;
2) Services or Federal personnel; and
3) Real and personal property or any interest in the use of such property.

Goal means a number or percentage representation of persons with a particular characteristic which a recipient attempts to achieve in its student population or work force by giving, as one factor in its admissions process, favorable consideration to applicants with that particular characteristic.

Handicapped person means a person who is:

1) Mentally retarded;
2) Hard of hearing;
3) Deaf;
4) Speech-impaired;
5) Visually handicapped;
6) Seriously emotionally disturbed;
7) Orthopedically-impaired;
8) Other health-impaired person, or persons with specific learning disabilities; and

Who by reason of the above:

1) Requires special education and related services; and
2) Cannot succeed in the regular vocational education program without special educational assistance; or
3) Requires a modified vocational education program.

Limited English language skills mean:

1) Individuals who were not born in the United States or whose native tongue is a language other than English; or
2) Individuals who came from environments where a language other than English is dominant, and who by reason of the above have difficulty speaking or understanding instruction in English.

Program means a planned course or sequence of courses, services, or activities designed to meet an occupational or educational objective.

Quota means a number or percentage of a recipient's student population or work force reserved for persons with a particular characteristic and unavailable to persons without that characteristic.

Recipient means a recipient of Federal financial assistance.

Selection criteria means any measure, combination of measures, or procedure used as a basis for any admission, recruitment or employment decision. Selection criteria include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational and work experience requirements through informal or casual interivews and unscored application forms.

Stereotyping means attributing behaviors, abilities, interests, values, and roles to a person or group of persons on the basis of their race, color, national origin, sex, handicap, or age.